

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**COUNTRY CLUB FOR KIDS II LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation time

**Employer:** Country Club for Kids II LLC, 23 Prescott Rd, Raymond, NH 03077

**Date of Hearing:** October 15, 2015

**Case No.** 51400

**BACKGROUND AND STATEMENT OF FACTS**

A Wage Claim was filed with the Department of Labor on August 24, 2015. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on September 28, 2015.

The claimant testified that she worked for the employer for four years. She held the position of Center Director. She testified that she gave a verbal notice that she was leaving her employment and served out her notice period. She testified that she accrued leave on January 1 of each year. At the time of her separation she had 68 hours of vacation time on the books and she feels the rules allow her to be paid for this accrued time. The Wage Claim is for \$1,020.00.

The claimant testified that she was the Director of the facility and she was aware of the rules she and others worked under. She further stated that she was not aware of any verbal or written disciplinary actions against her. The claimant further testified that she did not give a written notice of resignation but did give a verbal notice and worked the total pre-resignation period.

The employer testified that they were to stand on their rights as explained in the written policy of the Country Club for Kids II LLC. The employer stated that the claimant was not in good standing and did not provide a written notice of separation and so she was not entitled to

any paid accrued leave. The employer made it clear that the claimant held a position that required her to know the rules and regulations.

### **FINDINGS OF FACT**

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as vacation time into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the age Claim is not valid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

The claimant was in a management position with the employer. During her testimony she admitted that she knew about the requirement to provide a written notice of separation. She felt that her verbal notice was enough.

The employer testified that the claimant was not in good standing with the employer because of numerous violations of the rules and an inability to follow the official mandates of the State. This along with the lack of a written notice of separation negates the payout of accrued vacation time.

The employer did not prove any of the allegations that would lead the claimant to not be in good standing with the employer. These were not documented incidents that were followed up on by the employer.

The claimant did not provide a written notice of separation and therefore negated her payout of accrued vacation time. The claimant was also aware of the policy and the intent of the policy.

Because it is clear that the policy was in place and that the claimant was aware of the policy, the Wage Claim is invalid.

### **DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due any vacation pay, it is hereby ruled that the Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: November 12, 2015

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